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examination of the ladies was made for the purpose of vexation and delay. We think there is some reason for such a view. In any event so far as the material part of the charge is concerned, namely, the steel trunk and the valuable items of clothing, it has not been shown that there has been any prejudice by the omission to enforce the attendance of the Maharanis of Darbhanga.

The result, therefore, is that the conviction and sentence must be affirmed and the application dismissed.

SCROOPE, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

Before Mullick and Scroope, JJ.

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March, 11

MAHARAJ BAHADUR SINGH.

v.

RAI BAHADUR P. C. LAL CHAUDHURY.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXI, rule* 54—*Execution of decree—Notice of sale, whether publication necessary in every mauza to be sold—Proceeding to set aside sale—question of valuation may be raised.*

Where a large number of mauzas are to be put up for sale in execution of a decree it is not necessary that notice of the sale should be published in every mauza.

Krishna Pershad Singh v. *Moti Chand* (1), distinguished.

In a proceeding to set aside an execution sale on the ground of irregularities in publishing and conducting it, the judgment-debtor is not precluded from raising the question of valuation merely because the question has already been decided when the sale proclamation was settled.

Mahadeo Singh v. *Dhobi Singh* (2), doubted.

*Appeal from Original Order no. 103 of 1926, from an order of Babu Harihar Charan, Subordinate Judge of Purnea, dated the 22nd April, 1926.

(1) (1913) I. L. R. 40 Cal. 635. (2) (1923) I. L. R. 2 Pat. 916.

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Appeal by the judgment-debtor from an order refusing to set aside an execution sale on the ground of irregularity in publishing and conducting it.

The facts of the case material to this report are stated in the judgment of Mullick, J.

C. C. Das (with him *B. N. Mitter* and *G. N. Mukherji*), for the appellant.

Sultan Ahmed (with him *A. H. Fakhruddin*), for the respondent.

MULLICK, J.—This appeal arises out of an application to set aside a sale which was held on the 4th June, 1925. The Subordinate Judge found that there had been no irregularity in publishing and conducting the sale and dismissed the application. The sale was held in execution of a rent decree passed on the 20th June, 1920, by the Subordinate Judge of Purnea in favour of the respondent Rai Bahadur Pirthi Chand Lal Chaudhury against the appellant Babu Maharaj Bahadur Singh for the rent of a patni taluk for the years 1325 to 1327 Mulki (corresponding to 1918 to 1920). The taluk has been the subject of considerable previous litigation. The former proprietor of the estate was one Dhanpat Singh, the father of the appellant and under him the patni was at one time held by one Babu Chhatarpat Singh. Dhanpat Singh sold the proprietary interest to the respondent and in 1913 a suit was brought by Chhatarpat Singh against the respondent to set aside a sale of the patni taluk which had been held on the 16th November, 1912. That suit succeeded and the sale was set aside.

We find next that after Dhanpat Singh's death his trustees Babu Indra Chandra Bothra and others and the appellant Maharaj Bahadur Singh sued Chhatarpat Singh for some rent which had accrued before the transfer of the proprietary right to the respondent and obtained a money decree which was

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put into execution in the year 1912. In that execution the decree-holders Indra Chandra Bothra and others purchased the patni mahal for a sum of Rs.39,000 on the 8th March, 1915, and thereby became talukdars under the respondent Pirthi Chand Lal Chaudhury.

We next find that P. C. Lal Chaudhury brought a suit against Chhatarpat Singh for rents which had accrued before the 8th March, 1915 and obtained a decree and brought the taluk to sale on the 27th March, 1916, and that Rani Mina Kumari, the mother of the appellant, purchased it for a sum of Rs. 41,000.

The taluk was again in arrears and was sold under the provisions of the Patni Regulation VIII of 1819 on the 16th November, 1916, and was purchased by one Mouji Lal for a sum of Rs. 10,000.

To set aside this last sale Maharaj Bahadur brought a suit on the 1st December, 1916, and valued the property at Rs. 39,000.

Mina Kumari also brought a suit to set aside the same sale on the 30th March, 1917, valuing the property at Rs. 41,000.

In the execution proceedings which resulted in the sale now under consideration, the property was valued by the Subordinate Judge on the 24th January, 1925, in the presence of the parties to the suit, and the Subordinate Judge, after considering the documents relating to the proceedings referred to above and the oral evidence adduced by the parties, found that the property should be valued at Rs. 41,000. The sale proclamation was then published upon the footing of this valuation and the property was purchased at the sale by the decree-holder Rai Bahadur P. C. Lal Chaudhury for that sum.

One of the questions to be decided by us will be whether this price was inadequate and whether it

was the result of the irregularities in the sale alleged by the judgment-debtor.

But the first question is whether there was any irregularity at all. The provisions of law applicable to the sale are contained in Order XXI, rules 54, 66 and 67, of the Code of Civil Procedure read with Chapter XIV of the Bengal Tenancy Act.

Now the property comprises forty mauzas which are situated in thanas Forbesganj, Purnea, and Raniganj in the district of Purnea. It is alleged by the decree-holder that the notices of attachments and the proclamations of sale were published in fourteen mauzas by two Civil Court peons Hossaini and Mahabir on the 26th April, 27th April, 28th April and 29th April, 1925. Hossaini made the services in mauzas Hingna and Lachmipur in thana Forbesganj and in mauzas Kharhat, Parmanpur and Kopari in thana Raniganj. The other peon Mahabir made the services in mauzas Raghopur, Mirzapur, Bishtaria, Kajra, Pachira, Tamghati, Pahasra Basaiti and Jhunni. The decree-holder also alleges that service was duly made in the thana buildings at Purnea, Raniganj and Forbesganj. Also a notification was published in the Government Gazette on the 29th April. And finally remembering his previous difficulties in connection with this property the decree-holder took the precaution of engaging the services of Babu Ashutosh Moitra, a photographer of Katihar, who went with the peon Hossaini to mauza Kharhat and with the peon Mahabir to mauza Raghopur and was present at the time the service was made in those mauzas and took a photograph of the persons assembled there. The first proofs of these photographs were signed by the photographer on the 27th April, 1925, and were produced before the Subordinate Judge in the inquiry under Order XXI, rule 90, of the Code of Civil Procedure.

In support of the allegations with regard to the services made by Hossaini, the decree-holder has

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called the peon himself. He has also examined the drummer Bhadai, the identifier Bhagwat and five villagers named Tulsi, Jagap, Santokhi Mandal, Chulhai Mandal and Sumrit Mandal. Hossaini has attested his signature upon the reports made by him with regard to the services and it is admitted that there is a discrepancy between his evidence in court and the reports. Hossaini's reports show that he made the services on the 26th and 27th April; but the date on which he submitted the reports to the Subordinate Judge was the 2nd May. In court he says that he wrote the reports on the spot at the time of service and, therefore, there is a discrepancy between his two statements on this point. It would seem that he wrote out the service return after he go back to headquarters; but his evidence on the whole has been accepted by the learned Subordinate Judge, and I think that the discrepancy is due to defect of memory, particularly so as there is a large amount of evidence corroborating the service of notice in the mauzas. The drummer and the identifier are of course the decree-holder's men, but the villagers who support Hossaini have no interest in deposing falsely, and I think they were rightly believed by the learned Subordinate Judge. Then, there is no question that service was duly made at the police-stations, and having regard to the fact that a notification was also published in the Gazette, I can see no reason why the decree-holder should have brought false evidence for the purpose of supporting the peon.

The most remarkable corroboration however of the peon's statement is supplied by the photograph taken in mauza Kharhat. There is no reason for distrusting the photographer who says that he accompanied the peon and took the photograph in which some of the persons who have given evidence in this case have been marked by the letters C, C1, C5 and C6. This photograph shows that there was a gentleman named Saroda Babu who was looking

after the interests of the decree-holder and that the party assembled at the place where service was made comprised among others Hossaini, Bhadai, Bhagwat and Chulhai.

With regard to the services made by Mahabir the evidence is equally satisfactory and clear. Mahabir is supported by the drummer Bhadai and by the identifier Chhatar and six villagers, Bansi, Wazir Ali, Bahoran Gossain, Adhin Lal Mandal, Bazrangi Lal and Chulhai Mandal and by the photographer Ashutosh Moitra. The reports submitted by Mahabir have been proved by him in court, and there is no material discrepancy between the evidence given by him and either his own reports or the evidence given by the other witnesses. There is also a group taken at Raghopur signed by the photographer on the 27th April, 1925. This photograph shows Saroda Babu standing by a horse which he had evidently been riding and also the peon and Bahoran Gossain and Adhin Mandal marked respectively by the letters C2, C3 and C4.

The evidence shows that the notices were served in one mauza on the 26th April, in eight mauzas on the 27th, in four mauzas on the 28th and in the last mauza on the 29th. The reports, as has already been stated, were submitted by the two peons on the 2nd May and the 11th May.

The learned Subordinate Judge saw the witnesses and believed them and in my opinion he was fully justified in holding that there had been no irregularity in publishing and conducting the sale.

A point was attempted to be made before us on behalf of the appellant that as the properties comprised forty mauzas publication should have been made in more than fourteen mauzas. It is clear that the law does not require that publication should be made in every mauza. *Krishna Pershad Singh* v. *Moti Chand* (1) was cited, but that case has no

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application. In that case the execution court in terms directed that the sale proclamation should be served in every mauza and as there was a gross contravention of the orders of the court, it was held by their Lordships of the Privy Council that the sale was bad; but there is no justification for the contention that in every mauza comprising an estate or a tenure a separate proclamation is to be served. Rule 54 of Order XXI of the Code of Civil Procedure requires that the order shall be proclaimed at some place on or adjacent to the property by beat of drum and that a copy of the order shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the court-house and at the office of the Collector of the district where the land is situated, and it is clear that in this case these provisions were substantially complied with. It appears from a reference to the district map that the mauzas are all situated close together and that the places where the services were made constitute some of the largest villages within the taluk. From the fact that services were made in several mauzas on one and the same date, it is clear that they were not separated from each other by great distances, and in the circumstances, there can be no doubt that the provision regarding service in or upon a conspicuous part of the taluk was complied with. With regard to the other requirements of the law, no arguments have been addressed to us, and upon the question of fact whether or not service was made as alleged we are in complete agreement with the learned Subordinate Judge and we hold that no irregularity has been proved.

This makes it unnecessary for us to enter into the question of inadequacy of price, but as the parties have adduced documentary evidence and also some oral evidence upon the point in the court below and the court has gone into the question at some length, we will record a finding on that point also.

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We have to observe at the outset that the learned Subordinate Judge was in error if he thought that the judgment-debtor was precluded from raising the question of valuation in the inquiry before him simply because the question had already been decided when the sale proclamation was settled. There was no estoppel in the matter at all. The learned Judge relies upon *Mahadeo Singh* v. *Dhobi Singh* (1). But in that case a notice was issued upon the judgment-debtor informing him that the court had valued the property at a certain figure and he was called upon to show cause why that value should not be entered in the sale proclamation. The judgment-debtor declined to appear. The property was eventually brought to sale and when the judgment-debtor made an application to set aside the sale it was held that the principle of res judicata must be applied and that he was precluded from raising the question again. It is also to be observed that *Mahadeo Singh's* case has been overruled though on another point and it is doubtful if the decision regarding the valuation which was really obiter is binding. But in effect, the learned Subordinate Judge's error has not affected the result. The judgment-debtor examined altogether fourteen witnesses. After thirteen witnesses had been examined, he called a witness to give oral evidence with regard to the value of the property and at that stage the court expressed the opinion that further evidence on the point should not be given. But the documentary evidence was already in and the learned Subordinate Judge upon that documentary evidence, eventually recorded a finding that the value of the property was about Rs. 41,000 and that there had been no inadequacy of price in the sale.

Now in 1914 in the suit brought by Chhatarpat Singh against Rai Bahadur P. C. Lal Chaudhury (Exh. 7) to which reference has already been made, the court valued the property at Rs. 60,000 without contest. In the judgment (Exh. 8) which relates

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to the sale of the 8th March 1915 referred to above the court thought that Rs. 39,000 was a fair valuation taking into account the fact that a sum of Rs. 27,000 was due for arrears rent. In the two plaints filed respectively by Maharaj Bahadur Singh on the 1st December, 1916 (Exh. 1) and Mina Kumari on the 30th March, 1917 (Exh. J), the valuations given are Rs. 39,000 and Rs. 41,000 respectively. It must be assumed, till the contrary is shown, that the plaintiff in each of the suits complied with the provisions of the law and gave the true market value. The learned Subordinate Judge has relied on these two plaints in arriving at the finding that the property could not at the end of 1916 and at the beginning of 1917 have been worth more than Rs. 41,000. The learned Counsel for the appellant suggests that the true value was not given because the plaintiff was allowing for the outstanding charges on account of rent; but there is no evidence to support this explanation. I cannot, therefore, say that, in the circumstances, the learned Subordinate Judge was wrong in holding that the value of the property was about Rs. 41,000.

It is, however, contended that even if the value was Rs. 41,000 in 1917 there were five darpatni tenures in the estate which have since been cancelled and that consequently the value of the patni interest has gone up. That argument is correct but there is no evidence to show what is the income of the property, nor at how many years' purchase the property should be valued. Without documentary evidence of the income it is difficult to arrive at a satisfactory valuation of the present value of the patni.

But even if the value of the property is Rs. 60,000 as was held in 1914, I do not think that Rs. 41,000 can be considered to be an inadequate price in view of the fact that it was the price fetched at a forced sale. Further it appears that at the time when the decree-holder purchased the property on the 4th June, 1925, a sum of Rs. 56,000 was due on

account of arrears of rent, and it is probable that bidders at the sale were influenced by this fact. It is impossible also to expect the full market value of a property to be realised by a sale in court and, in the circumstances, I am unable to say that there has been an inadequacy of price.

In any event, if there was any inadequacy, the appellant is not entitled to any relief because the sale was duly and properly published and conducted.

MULLICK, J.

The appeal, therefore, must be dismissed with costs.

SCROOPE, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Kulwant Sahay, J.

DHATURI SINGH

v.

KEDAR NATH GOENKA.

1927.

March, 22.

Court-fees Act, 1870 (*Act VII of* 1870), *section* 8—*suit, valuation of, whether can be enhanced for the purpose of jurisdiction.*

Under section 8, Court-fees Act, 1870, the valuation for the purposes of jurisdiction and court-fee must be the same; and a party is not entitled, where the valuation of the suit can be correctly ascertained, to enhance it merely for the purpose of jurisdiction.

Plaintiffs sued the appellant for arrears of rent amounting to Rs. 3,593-10-9. In the same suit they claimed enhancement of rent. Under the Court-fees Act the valuation of such a claim is based upon the amount of one year's rent, which, in the present case, was Rs. 718-11-9. The value of the suit for the purposes of court-fee was Rs. 4,312-6-6. For the purposes of jurisdiction, however, the value of the suit was stated to be Rs. 5,100. The suit having been decreed, the defendants appealed to the District Judge, who returned the